

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Amendment of Section 73.202(b).
Table of Allotments
FM Broadcast Stations
(Forestville, Wisconsin and Counter-Proposed Algoma, Wisconsin)

RM-8806
MM Docket No. 96-121

John A. Karousos
Chief, Allocations Bureau
Policy and Rules Division
Mass Media Bureau

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To the Commission:

FCC MAIL ROOM

**COMMENTS IN COUNTER-PROPOSAL TO ASSIGN A NEW F M STATION AT
ALGOMA, WISCONSIN**

Comes now, WTRW Incorporated, by its' President Mark Heller, with comments to the petition for rulemaking to assign a new FM channel at Forestville, WI, and WTRW's Counter-Proposal to assign same to Algoma, Wisconsin. WTRW is responding in a timely manner, as detailed in FCC Report Number 2149, dated August 16, 1996.

Forestville, Wisconsin is an incorporated village, with 470 inhabitants. Forestville is less than one square mile in size, primarily surrounded by vast farmland, has no tourist accommodations, and approximately 6 commercial establishments, employing no more than 50 people, most of whom are not Forestville residents.

While Forestville has it's own Zip Code and Post Office, it relies upon the

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communities of Algoma, Sturgeon Bay and Kewaunee, Wisconsin for hospital services, public schools, public library and recreational facilities. Moreover, the seven radio stations license to Sturgeon Bay, Algoma and Kewaunee, cover Forestville with a city-grade signal contour. The residents of Forestville are served by these stations with news and information.

Algoma, Wisconsin the counter-proposed community, is a vibrant community with 3,353 inhabitants. It is the largest community in Kewaunee County, and serves as one of two commercial and industrial hubs in Kewaunee County.

Whereas, Section 307(b) of the Commission's Rules directs that "(e)very community of 'appreciable size' ... is presumed by the Commission to need at least one radio station for local self-expression." Ruarch Associates, 56 RR 2d 1593, para 2 (Rev. Bd. 1984) *aff'd*, 101 FCC 2d 1358 (1985) (emphasis added). Where a "transmission service disparity already exists, a different presumption applies, namely that the community which has no transmission service has a greater need than the community that already has one (or more)." *Id.* @ para 5. (emphasis added). However, these are rebuttable presumptions, and the Commission has refused to give very small communities a dispositive Section 307(b) presumption in a multiple party proceeding. Reeder v. FCC, 865 F.2d 1298 (D.C. Cir. 1989).²

In Ruarch, the Review Board found that Edinburgh, Virginia, with no licensed transmission service, was not entitled to a dispositive Section 307(b) preference over the competing community of Woodstock, Virginia, notwithstanding the fact that

² Cf. FM Channel Assignments, 51 RR 2d 25, 29 (1983) (favoring a second assignment to a larger community over a first assignment to a very small community is consistent with the Commission's mandate to assign frequencies in a fair and efficient manner.

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Woodstock possessed a full-time AM facility already. A critical factor in reaching this decision was that the Commission has "not been directed to a single case in which a community with a population of less than 1,000 has received a dispositive Section 307(b) preference." Id. @ para 6.

In Santee Cooper Broadcasting of Hilton Head, Inc., 99 FCC 2d 781, (Rev. Bd. 1984), aff'd sub nom Women's Broadcasting Coalition, 59 RR 2d 730 (1986), the Commission relied heavily on Ruarch when it ruled that Bluffton, South Carolina, a community with no local broadcast service, was not entitled to a Section 307(b) preference over Hilton Head, South Carolina, a town with a commonly licensed AM/FM combination. Hilton Head was a community with 11,000+ inhabitants, 950 businesses employing 12,000 workers, that was the business, commercial and tourism center of the surrounding area, including Bluffton. Bluffton was an incorporated community less than one square mile in size, with 235 housing units, no tourist accommodations, one restaurant, 20 commercial establishments employing 68 to 86 people, most of whom were not Bluffton residents. Id. @ para 7.³

In New York University, 19 FCC 2d 358 (Rev. Bd. 1969), the Commission determined that the local origination aspects of Section 307(b) were of no great significance in considering non-commercial FM applications, and the Section 307(b) issue was only one consideration along with other comparative considerations which would go into the decision.

³ See also, New South Broadcasting Corp., 897 F.2d 867 (D.C. Cir. 1989) (Community without an existing local broadcast facility, not entitled to a preference over a large community served by two co-owned stations because the proposed community has a relatively small population, ill-defined boundaries and little need for a first local broadcast service).

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Forestville, with a population of less than 500 residents, is largely dependent upon its' surrounding area and well-served with news and information from stations licensed to Sturgeon Bay, Algoma and Kewaunee. It is a quiet village, similarly situated with Algoma and Sturgeon Bay and does not warrant a dispositive Section 307(b) preference over Algoma.

Moreover, the Algoma proposal presents a more efficient use of the broadcast spectrum because it will serve substantially more area and population than the Forestville proposal, which is situated directly against an adjacent channel located at Seymour, Wisconsin, with no room to move its' tower site if needed.

The Forestville proposal should be dropped, without unduly impeding the fair, efficient and equitable distribution of radio service. The Counter-Proposal to allocate Algoma, Wisconsin its' second FM service serves the Public's interest and needs.

Therefore, WTRW respectfully requests, in light of the above mentioned prior case law, that the Commission amend its' FM table of allotments to allot Channel 281A to Algoma, Wisconsin at the coordinates of 44 - 36 - 18 and 87 - 26 - 12, and that if such window of opportunity exists to apply for same, Petitioner will apply for same.

I hereby certify, that I have read this entire document, and to the best of my knowledge, information and belief, that the foregoing statement is true and correct, that there is good and sufficient reason to support same, and that it is not submitted for delay.

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Sincerely,

WTRW INCORPORATED



Mark Heller, President

WTRW Incorporated

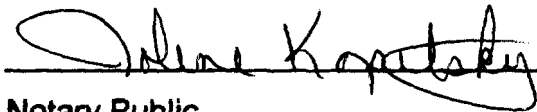
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August 22, 1996

Subscribed and Sworn to, before me this 22 day of August, 1996.



Notary Public.

(seal)

My commission expires 2 10 7 1999

CERTIFICATE OF SERVICE

I, Mark Heller, hereby certify that on the 22nd day of August, 1996, I served a copy of the foregoing "COMMENTS IN COUNTER-PROPOSAL TO ASSIGN A NEW F M STATION AT ALGOMA, WISCONSIN" by first class United States mail, postage prepaid, upon the following:

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